

due to his or her own misconduct, neglect or lack of application, there is a reasonable likelihood with respect to the program the veteran or eligible person proposes to pursue that there will not be a recurrence of such an interruption or failure to progress, and

(iii) In the case of an eligible child the new program meets the criteria applicable to final approval of an original application. See §21.4230.

(3) The Department of Veterans Affairs may approve a third or subsequent change of program if applicable conditions of paragraph (d)(2) of this section are met and the additional change or changes are necessitated by circumstances beyond the control of the veteran or eligible person. Circumstances beyond the control of the veteran or eligible person include, but are not limited to:

(i) The course being discontinued by the school when no other similar course leading to the same objective is available within normal commuting distance.

(ii) Unexpected financial difficulties preventing completion of the last program because of the overall cost of the program needed to reach the objective, or

(iii) The veteran or eligible person being required to relocate because of health reasons in an area where training for the last objective is not available within normal commuting distance.

(Authority: 38 U.S.C. 3691)

(4) Notwithstanding any provision of any other paragraph of this section, if a third or subsequent change of program occurs after May 31, 1991, VA will apply only the applicable provisions of paragraph (d)(2) of this section. If the applicable provisions of paragraph (d)(2) of this section are met, VA will approve the change of program. VA will not apply any of the provisions of paragraph (d)(3) of this section in determining whether the change of program should be approved.

(Authority: 38 U.S.C. 3691; Pub. L. 101-366) (June 1, 1991)

(e) *Adjustments; transfers.* A change in courses or places of training will not be considered a change of objective in the following instances:

(1) The pursuit of the first program is a prerequisite for entrance into and pursuit of a second program.

(2) A transfer from one school to another when the program at the second school leads to the same educational, professional or vocational objective, and does not involve a material loss of credit, or increase training time.

(3) Revision of a program which does not involve a change of objective or material loss of credit nor loss of time originally planned for completion of the veteran's or eligible person's program. For example, an eligible person enrolled for a bachelor of science degree may show a professional objective such as chemist, teacher or engineer. His or her objective for purposes of this paragraph shall be considered to be "bachelor degree" and any change of courses will be considered only an adjustment in the program, not a change, so long as the subjects he or she pursues lead to the bachelor degree and there is no extension of time in the attaining of that degree.

CROSS REFERENCE: *Counseling.* See §21.4100.

[31 FR 6774, May 6, 1966, as amended at 34 FR 845, Jan. 18, 1969; 39 FR 34036, Sept. 23, 1974; 39 FR 45237, Dec. 31, 1974; 45 FR 67093, Oct. 9, 1980; 57 FR 29027, June 30, 1992; 57 FR 40614, Sept. 4, 1992; 60 FR 32272, June 21, 1995; 61 FR 6783, Feb. 22, 1996]

§21.4235 Programs of education that include flight training.

VA will use the provisions of this section to determine whether an individual may be paid educational assistance for pursuit of flight training. See §21.4263 for approval of flight courses for VA training.

(a) *Eligibility.* A veteran or servicemember who is otherwise eligible to receive educational assistance under 38 U.S.C. chapter 30 or 32, or a reservist who is eligible for expanded benefits under 10 U.S.C. chapter 1606 as provided in §21.7540(b), may receive educational assistance for flight training in an approved course provided that the individual meets the requirements of this paragraph. Except when enrolled in a ground instructor certification course or when pursuing flight training under paragraph (f) of this section, the individual must—

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(1) Possess a valid private pilot certificate or higher pilot certificate such as a commercial pilot certificate;

(2) Hold a second-class medical certificate on the first day of training, and continuously during training unless the individual is enrolled in an Airline Transport Pilot (ATP) certification course; and

(3) If enrolled in an ATP certification course, hold a first-class medical certificate on the first day of training and continuously during training.

(Authority: 10 U.S.C. 16136(c); 38 U.S.C. 3034(d), 3241(b))

(b) *Approval of program.* VA may approve the individual's program of education as described on the individual's application if:

(1) The flight courses that constitute the program of education meet Federal Aviation Administration standards for such courses and the Federal Aviation Administration and the State approving agency approve them; and

(2) The flight training included in the program—

(i) Is generally accepted as necessary for the attainment of a recognized vocational objective in the field of aviation; or

(ii) Is given by an educational institution of higher learning for credit toward a standard college degree that the individual is pursuing.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3002(3)(A), 3034(a), 3202(2)(A), 3241(a), 3241(b), 3452(b), 3680A(a)(3))

(c) *Pursuit of a program of education.*

(1) Except as provided in paragraph (c)(2) of this section, an individual who is pursuing a program of education described in paragraph (b)(2)(i) of this section must first enroll in a commercial pilot certification course. If the individual wants to obtain a commercial pilot certification course in an airplane or powered lift category and does not already have an instrument rating, he or she must also enroll in an instrument rating course simultaneously with the commercial pilot course.

(2) The provisions of paragraph (c)(1) of this section do not apply to an individual who—

(i) Already has a commercial pilot certificate; or

(ii) Wishes to become a ground instructor through an enrollment in a ground instructor certification course.

(3) Unless the provisions of paragraph (b)(1)(ii), (c)(2)(i), or (c)(2)(ii) of this section apply to an individual's enrollment, VA will not pay for any enrollment in a flight course that precedes enrollment in a commercial pilot certification course.

(4) Except for the enrollment described in paragraph (c)(1) of this section, the individual must enroll in only one flight course at a time.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3002(3)(A), 3034(a), 3202(2)(A), 3241(a), 3241(b), 3452(b), 3680A(a)(3))

(d) *Some individuals are already qualified for a flight course objective.* (1) The provisions of §§ 21.5230(a)(4), 21.7110(b)(4), and 21.7610(b)(4), prohibiting payment of educational assistance for enrollment in a course for whose objective the individual is already qualified, apply to enrollments in flight courses.

(2) A former military pilot with the equivalent of a commercial pilot certificate and an instrument rating may obtain a commercial pilot certificate and instrument rating from the Federal Aviation Administration without a flight exam within 12 months of release from active duty. Therefore, VA will consider such a veteran to be already qualified for the objectives of a commercial pilot certification course and an instrument rating course if begun within 12 months of the individual's release from active duty.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3241(b), 3471(4))

(e) *Some flight courses are refresher training.* The provisions of §§ 21.5230(c), 21.7020(b)(26), 21.7122(b), 21.7520(b)(20), and 21.7610(b)(4) that provide limitations on payment for refresher training that is needed to update an individual's knowledge and skill in order to cope with technological advances while he or she was on active duty service apply to flight training.

(1) An individual who held a Federal Aviation Administration certificate before or during active duty service may have surrendered that certificate or the Federal Aviation Administration may have canceled it. The individual

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may receive the equivalent of the number of months of educational assistance necessary to complete the course that will qualify him or her for the same grade certificate.

(2) A reservist is not eligible for refresher training unless he or she has had prior active duty.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3002(3)(A), 3034(a)(3), 3202(2)(A), 3241(a), 3241(b))

(f) *Flight training at an institution of higher learning.* (1) An individual who is eligible for educational assistance under 10 U.S.C. chapter 1606 or 38 U.S.C. chapter 30, 32, or 35 is exempt from the provisions of paragraphs (a)(2) through (d) of this section when his or her courses include flight training that is part of a program of education that leads to a standard college degree.

(2) An individual described in paragraph (f)(1) of this section may pursue courses that may result in the individual eventually receiving recreational pilot certification or private pilot certification, provided that the courses also lead to a standard college degree.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3002(3)(A), 3034(a)(3), 3202(2)(A), 3241(a), 3241(b))

[63 FR 34129, June 23, 1998]

§ 21.4236 Tutorial assistance.

(a) *Enrollment.* A veteran or eligible person may receive supplemental monetary assistance to provide tutorial services if he or she:

(1) Is pursuing a post-secondary educational program on a half-time or more basis at an educational institution, and

(2) Has a deficiency in a subject which is indispensable to the satisfactory pursuit of an approved program of education.

(b) *Approval.* The Department of Veterans Affairs will grant approval when:

(1) The educational institution certifies that:

(i) Individualized tutorial assistance is essential to correct a deficiency in a specified subject or subjects required as a part of, or which is prerequisite to, or which is indispensable to the satisfactory pursuit of an approved program of education;

(ii) The tutor selected:

(A) Is qualified, and

(B) Is not the parent, spouse, child, brother or sister of the veteran or eligible person; and

(iii) The charges for this assistance do not exceed the customary charges for such tutorial assistance; and

(2) The assistance is furnished on an individual basis.

(Authority: 10 U.S.C. 16131(h); 38 U.S.C. 3019, 3234, 3492, 3533(b))

(c) *Limits on tutorial assistance.* (1) VA will authorize the cost of tutorial assistance in an amount not to exceed \$100 per month.

(2) The total amount of all tutorial assistance provided under this section will not exceed \$1200.

(Authority: 38 U.S.C. 3019, 3492, 3533(b))

(d) *Entitlement charge.* VA will make no charge against the veteran's or eligible person's entitlement to educational assistance for any amount of tutorial assistance authorized.

(Authority: 38 U.S.C. 3019, 3492, 3533(b))

[48 FR 37989, Aug. 22, 1983, as amended at 50 FR 19935, May 13, 1985; 55 FR 28027, July 9, 1990; 61 FR 26114, May 24, 1996]

COURSES

§ 21.4250 Approval of courses.

(a) *General.* A course of education, including the class schedules of a resident course (other than a flight course) not leading to a standard college degree, offered by a school must be approved by the State approving agency for the State in which the school is located, or by the State approving agency which has appropriate approval authority, or, where appropriate, by the Department of Veterans Affairs.

(Authority: 38 U.S.C. 3672)

(1) A course approved under 38 U.S.C. chapter 36 shall be deemed approved for purposes of 38 U.S.C. chapter 35.

(2) Any course which was approved under 38 U.S.C. chapter 33 (as in effect before February 1, 1965), or under 38 U.S.C. chapter 35 prior to March 3, 1966, and was not or is not disapproved for failure to meet any of the requirements of the applicable chapters will be